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9 HEALTHCARE SYSTEM, INC., dba
SOUTHERN CALIFORNIA HOSPITAL
10 AT CULVER CITY

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 DONNA RATLIFF, individually and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 v.

17 PROSPECT MEDICAL HOLDINGS,
INC. dba SOUTHERN CALIFORNIA
18 HOSPITAL AT CULVER CITY,

19 Defendant.

Case No. 2:16-cv-00253-GW-JEM

Honorable George H. Wu

CLASS ACTION

**REPLY IN SUPPORT OF MOTION
TO DISMISS THE FIRST
AMENDED COMPLAINT OR, IN
THE ALTERNATIVE, TO STRIKE
THE CLASS ALLEGATIONS**

Fed. R. Civ. P. 12(b)(6), 12(f), and
23(d)(1)(D)

Date: Thursday, April 14, 2016
Time: 8:30 a.m.
Ctrm: 10 (Spring Street)

FAC Filed: Feb. 17, 2016

1 **I. INTRODUCTION**

2 This Court is likely no stranger to cases brought under the Telephone
3 Consumer Protection Act (“**TCPA**”). Some of these cases address legitimate
4 wrongs, but many are overreaches perpetrated by plaintiffs and their counsel. This
5 case is the latter. Plaintiff Donna Ratliff (“**Plaintiff**”) did not pay her hospital bill,
6 and has now filed suit under the TCPA because Defendant Southern California
7 Healthcare System, Inc. dba Southern California Hospital at Culver City
8 (erroneously sued as Prospect Medical Holdings, Inc.) (“**SoCal Hospital**”) called
9 her about the debt. The core problem with Plaintiff’s complaint is that she gave
10 consent for SoCal Hospital to place the calls alleged in the First Amended
11 Complaint (“**FAC**”). She did so in at least two ways: (1) Plaintiff provided her
12 phone number to SoCal Hospital, which is sufficient consent under the law to call
13 about a debt; and (2) Plaintiff executed an agreement that included a provision
14 conferring consent, and even initialed that provision. Nevertheless, Plaintiff is
15 bringing suit on behalf of herself and a class. SoCal Hospital respectfully requests
16 that the Court not allow it.

17 **II. THE FAC SHOULD BE DISMISSED**

18 **A. Plaintiff Consented To The Calls**

19 There can be no reasonable dispute that Plaintiff consented to the debt
20 collection calls alleged in the complaint, as least in the first instance. As set forth in
21 SoCal Hospital’s Motion, the mere provision of a cell phone number is consent to be
22 called about a debt. *See In the Matter of Rules & Regs. Implementing the Tel. Cons.*
23 *Prot. Act of 1991*, 23 F.C.C. Rcd. 559, 564 (2008) (“**2008 Ruling**”) at ¶ 10.¹ Here,
24 Plaintiff not only provided SoCal Hospital her phone number, but also executed an
25

26 ¹ *See also Mais v. Gulf Coast Collection Bureau, Inc.*, 768 F.3d 1110, 1121 (11th
27 Cir. 2014); *Baird v. Sabre Inc.*, 995 F. Supp. 2d 1100, 1106-07 (C.D. Cal. 2014);
28 *Hudson v. Sharp Healthcare*, No. 13-CV-1807-MMA NLS, 2014 WL 2892290,
at *4 (S.D. Cal. June 25, 2014).

1 agreement that included an express consent provision – *and she even separately*
2 *initialed the consent provision.*

3 In her Opposition, Plaintiff does not dispute that her providing her cell phone
4 number was sufficient consent. At the very least, then, the Court should find that
5 Plaintiff has conceded that argument and further hold that she consented to the calls.

6 Instead, Plaintiff attacks the written consent form, arguing that the Court
7 cannot review it on a motion to dismiss, and suggesting that the consent form is not
8 authentic. Plaintiff's arguments are meritless. First, Plaintiff's position is contrary
9 to the law. Caselaw repeatedly confirms that matters either referenced in the
10 complaint or integral to the claims asserted can be reviewed on a motion to dismiss.
11 *See Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th Cir. 1998); *Martinez v. Welk*
12 *Group, Inc.*, No. 09 CV. 2883, 2011 WL 90313, at *1, *3 (S.D. Cal. Jan. 11, 2011).
13 Indeed, it would be odd in the least for a Plaintiff to allege that she received a debt
14 collection call, and then the Court not be able to review the agreement underlying
15 the debt. A Plaintiff is not permitted to so deliberately hide the ball in order to state
16 a claim. Second, Plaintiff's argument that the consent form may not be authentic
17 ignores SoCal Hospital's statement that it can provide a complete copy of the
18 agreement to the Court and Plaintiff, but that doing so may violate HIPAA. Plaintiff
19 should already have a copy of the agreement (she signed it), and likely does because
20 Plaintiff has not asked SoCal Hospital for a copy. In any event, SoCal Hospital will
21 make a copy available for review if it is needed. Notably, Plaintiff nowhere denies
22 that she signed or initialed the form; nor does she deny giving consent, at least in the
23 first instance.

24 In light of the foregoing, the Court should hold that Plaintiff provided her
25 consent to be called. Whether she validly states a claim thus depends on whether
26 she adequately alleges that she revoked her consent. SoCal Hospital addresses that
27 argument next.

28

1 **B. Plaintiff's Allegations That She Revoked Consent Are Insufficient**

2 Plaintiff provides adequate details about two calls – calls on August 26 and
 3 31, 2015. She generally alleges that she was called multiple other times, but does
 4 not indicate when, if those calls were with an auto-dialer, or even if those calls came
 5 before or after the two calls in August 2015. Separately, she alleges that “multiple
 6 times [she] would answer Defendant’s calls and tell Defendant to stop contacting
 7 [her].” She does not, however, allege when she supposedly revoked her consent –
 8 that is, whether it was before or after the two alleged calls in August. Nor does she
 9 allege what she said to effect the revocation of her consent, or to whom, or what the
 10 representative said in response, if anything. Plaintiff’s allegations are so vague that
 11 Defendant does not even have sufficient information to either admit or deny the
 12 allegation.

13 Plaintiff’s allegation that she “instructed her attorney” to revoke consent on
 14 her behalf are equally insufficient. Instructing an attorney to do something is
 15 different than him actually doing it. In addition, even assuming it actually happened
 16 (which it didn’t), there are no allegations about when it happened, what was said, to
 17 whom it was said, or whether anything was said in response.

18 Based on the foregoing, SoCal Hospital respectfully requests that the Court
 19 dismiss the FAC.

20 **III. IN THE ALTERNATIVE, PLAINTIFF’S CLASS ALLEGATIONS**
 21 **SHOULD BE DISMISSED**

22 Plaintiff consented to being called. Her theory of recovery is thus necessarily
 23 tied to her vague allegation that she revoked her consent. But Plaintiff is attempting
 24 to represent a putative class of individuals that allegedly *never consented* in the first
 25 instance. Whether those individuals provided their cell phone numbers to SoCal
 26 Hospital or executed the written consent forms are issues entirely distinct from
 27 whether Plaintiff or others thereafter revoked their consent. Plaintiff cannot mix
 28 apples and oranges in this way.

1 If Plaintiff truly revoked her consent, and SoCal Hospital truly violated the
 2 TCPA thereafter, then Plaintiff should be limited to alleging a similarly situated
 3 class – *i.e.*, those who also revoked consent. Plaintiff’s counsel knows, however,
 4 that no such class can be certified so they persist with trying to represent a class that
 5 Plaintiff is not a member of. Because her class allegations are necessarily broader
 6 than the claims she is asserting, her class allegations must be dismissed.

7 A simple example illustrates Plaintiff’s problem – assume the jury after
 8 hearing the evidence determined that Plaintiff voluntarily provided her cell phone
 9 number and executed an agreement allowing for automated calls to her cell phone.
 10 How could she possibly be deemed an adequate class representative for those who
 11 never consented to be called. The issues involved would be completely different
 12 and a determination of Plaintiff’s claim would not be representative of the class she
 13 seeks to represent. Her class allegations must be dismissed.

14
 15 Dated: March 31, 2016 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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